UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/683,752	10/10/2003	Stephen Gold	200309332-1	5052

22879 7590 02/18/2010

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS, CO 80528

EXAMINER	
DILLON, SAMUEL A	

ART UNIT	PAPER NUMBER
2185	

NOTIFICATION DATE	DELIVERY MODE
02/18/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

JERRY.SHORMA@HP.COM
ipa.mail@hp.com
laura.m.clark@hp.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHEN GOLD and ROBERT GIBSON

Appeal 2009-001739
Application 10/683,752[1]
Technology Center 2100

Decided: February 16, 2010

Before JAMES D. THOMAS, JEAN R. HOMERE, and JAY P. LUCAS, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

DECISION ON APPEAL

---

[1] Application filed October 10, 2003. The real party in interest is Hewlett-Packard Development Company.

STATEMENT OF THE CASE

Appellants appeal from a final rejection of claims 1 through 20 under authority of 35 U.S.C. § 134(a). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention relates to tracking the status of media jobs (*i.e.*, tasks for backing up data, such as moving a backup computer disk to an offsite location). Media jobs are grouped into categories (*see* claim 1), such as a media movement category. In the words of Appellants:

> The system includes a user interface 104 that may be used to receive service level objectives for one or more media job categories. . . . (*e.g.*, a vaulting category for moving media having protected data to a different location, a scratch category for moving media having data that exceeded a protected time period to a scratch bin, and check out request category for media check out jobs).

(Spec. ¶ [0012]).

Claim 1 is exemplary, and is reproduced below:

> 1. A method comprising:
>
> receiving a service level objective for a media job category;
>
> determining a status for each of a plurality of media jobs associated with the media job category; and

providing for a user a status indicator for the media job category based on the service level objective and the status for each of the plurality of media jobs.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Cox	US 5,535,335	Jul. 09, 1996

"Legato NetWorker: Administrator's Guide, Release 6.0, UNIX Version." Legato Systems, Inc. (August 2000).

REJECTION

The Examiner rejects the claims as follows:

R1: Claims 1 to 20 stand rejected under 35 U.S.C. § 103(a) as being obvious over Legato in view of Cox.

Appellants contend that the claimed subject matter is not rendered obvious by Legato in combination with Cox because the Cox reference fails to disclose backup operations or issues of management of media "used to backup data" (App. Br. 13, bottom) and because there would have been no motivation to combine the references in the manner proposed by the Examiner. (*See id.* at 14, top to middle.) The Examiner contends that each of the claims is properly rejected (Ans. 21, top).

The rejections will be reviewed in the order argued by Appellants. The claims are grouped as per Appellants' Briefs. Only those arguments actually made by Appellants have been considered in this opinion.

Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUES

The pivotal issues involve whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The first issue specifically turns on whether Legato's disclosure of data-backup programs that inform a user of the status of a data backup and Cox's disclosure of a hierarchy of statuses rolled into an aggregate status meet Appellants' claim limitation "providing for a user a status indicator for the media job category based on the service level objective and the status for each of the plurality of media jobs" (claim 1). The second issue specifically turns on whether the combination of Legato and Cox is legally sufficient to render claim 1 obvious.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

Disclosure

1. Appellants have invented a method and system of determining the status of media jobs within a media category and providing a user a status of the media category. (*See* claim 1.)

Legato

2. The Legato reference discloses software programs that determine whether data backups have occurred. (*See* Legato 41, top to middle; p. 93, top to bottom) Legato's programs provide a user the status of the data backups for automated tracking purposes. (*See id.*; p. 37, middle.)

Cox

3. The Cox reference discloses hardware and software resources ("real resources) grouped in logical arrangements ("aggregate resources"). (*See* Abstract; col. 1, ll. 65-67; col. 2, ll. 9-11.) The status of the "real resources" is rolled into an overall reporting status of the "aggregate resource." (*See* Abstract; col. 2, ll. 11-15; col. 6, ll. 25-32; Ans. 9, bottom.) Cox further discloses providing a user the status of the aggregate resource. (*See* Fig. 1, element 3; col. 3, ll. 31-32.)

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

"It is common sense that familiar items may have obvious uses beyond their primary purposes, and a person of ordinary skill often will be able to fit the teachings of multiple patents together like pieces of a puzzle." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 402 (2007).

"A court must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions." *KSR*, 550 U.S. at 401.

Our reviewing court states in *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989), that "claims must be interpreted as broadly as their terms reasonably allow."

ANALYSIS

From our review of the administrative record, we find that the Examiner presents his conclusions of unpatentability on pages 3 to 7 of the Examiner's Answer. In opposition, Appellants present several arguments.

Arguments with respect to the rejection of claims 1 to 20 under 35 U.S.C. § 103(a) [R1]

Exemplary claim 1 recites, in relevant part, "providing for a user a status indicator for the media job category based on ... the status for each of the plurality of media jobs."

Appellants argue that Cox fails to disclose backup operations or issues of management of media "used to backup data" (App. Br. 13, bottom).

In reply, the Examiner states that Cox is not cited for disclosing backup operations (Ans. 8, top to middle). Rather, Legato discloses data-backup operations ("How the Networker Software Works" section, p. 41, top; Ans. 8, bottom). The Examiner finds that Cox discloses a hierarchical structure of status indicators. (*See* Cox, Abstract; col. 3, l. 27; Ans. 8, top to middle.) More specifically, the Examiner cites Cox because the patent says

"real resource" statuses are rolled up into an aggregate status for an "aggregate resource." (*See* Cox, col. 6, ll. 25-33.) The Examiner further states in the Answer that it would have been obvious to a person of ordinary skill in the art to substitute Legato's data-backup statuses for Cox's "real resources" statuses and to incorporate those data-backup statuses in Cox's status for the aggregate resource (cited for Appellants' claimed "status indicator" for the claimed "media job category") to make the claimed invention. (*See* Ans. 9, bottom.)

We agree with the Examiner's analysis for the following reasons. Legato discloses data backups (Appellants' claimed "media jobs") and data-backup statuses (Appellants' claimed "status indicator") (FF#2). Legato's data-backup statuses are provided to a user (Appellants' claimed "user") for automated tracking purposes (*id.*). In addition, the Cox reference discloses hardware and software (*i.e.*, "real resources) grouped in data centers (*i.e.*, "aggregate resources") (FF#3). The statuses of the "real resources" are rolled into an overall reporting status for the "aggregate resource" (*id.*). Cox further discloses providing a user the status (Appellants' claimed "status indicator") of the aggregate resource (Appellants' claimed "media job category") (*id.*).

In accordance with the teachings of *KSR*, the Examiner's findings are an arrangement of the puzzle pieces of Legato's data-backup statuses (Appellants' claimed "status for each of the plurality of media jobs") within Cox's hierarchal structure of statuses that result in an aggregate status (Appellants' claimed "status indicator for the media job category"). Although we acknowledge Appellants' argument that Cox does not disclose data backup (App. Br. 13, bottom), *KSR's* guidance requires that we

consider the teachings of multiple patents in concert. (*See KSR*, 550 U.S. at 402.) In this case, the Examiner has done exactly that (*see* Ans. 9, bottom) and provided a rationale for the proposed combination. (*See infra.*) In light of *KSR's* teachings, we adopt the Examiner's findings that it would have been obvious to a person of ordinary skill in the art to substitute Legato's data-backup statuses for Cox's "real resources" statuses and to incorporate those data-backup statuses in Cox's reporting status for the aggregate resource (Appellants' claimed "status indicator" for the claimed "media job category") to make the claimed invention. (*See* Ans. 9, bottom.) Accordingly, we find no error.

Next Appellants argue no motivation to combine Legato and Cox (App. Br. 14, top to middle).

In reply, the Examiner states in the Answer his rationale for combining the references: "It would have been obvious to a person having ordinary skill in the art to recognize the desirability of creating a single status indicator for the entire [collection] of statuses. This single status indicator [would have been used] to provide an overall summary of a system's status … for quick viewing, report generation, system summaries, [and] notifications" (Ans. 9, bottom).

"A court must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions." (*KSR*, 550 U.S. at 401).

We carefully reviewed the Briefs, the Answer, the cited portions of the references, and indeed the entire references. The Examiner has demonstrated his findings for Legato and Cox, which we adopted above. (*See* FF#2, FF#3.) We find that statuses in data-backup operations are well-

known prior-art elements, as the Examiner has demonstrated in Legato (FF#2). Moreover, Cox's aggregating of lower-level (*i.e.*, "real resource") statuses to find an overall or aggregate status (FF#3) is well-known in the prior art. We thus find that the method of claim 1 is merely a predictable use of Legato's and Cox's prior-art elements according to their established functions. (*See KSR*, 550 U.S. at 401.) We note that Appellants have not convincingly shown why a person of ordinary skill in the art would not have combined the cited prior-art elements in the manner proposed by the Examiner. Instead, Appellants rely upon conclusory statements that there would have been no motivation to combine Legato and Cox (App. Br. 14, top). In light of the Examiner's stated rationale, *KSR's* teachings regarding predictable use of prior-art elements, and Appellants' merely conclusory statements, we find the combination of Legato and Cox is indeed legally sufficient. Accordingly, we find no error in the examination of claim 1 in this regard.

Appellants further argue that Cox's "status" is forward-looking, whereas Appellants' claimed "status indicator" is backward-looking and performance-related (App. Br. 15, top to bottom).

We find unconvincing Appellants' argument, because claim 1 does not recite a "status indicator" that is "backward-looking and performance-related" (*id.*; claim 1). Appellants have chosen not to place such limitations on the claim language. Read broadly but reasonably, *see In re Zletz*, 893 F.2d at 321, Appellants' claimed "status indicator" encompasses an indicator that is "forward-looking" and "backward-looking and performance-related." Since Appellants' argument concerning a "backward-looking and

performance-related" status indicator is not commensurate with the scope of the claim language, we are not convinced by the argument. Accordingly, we find no error in the Examiner's analysis.

Finally Appellants argue that the claimed "media job category" does not read on Cox's "aggregate resource" (App. Br. 16, middle).

We already addressed Appellants' argument that the claimed "media job category" is not similar to Cox's "aggregate resource" (*id.*) in the above-stated analysis. (*See supra.*) Accordingly, we find no error.

We selected claim 1 as representative. Independent claims 12 and 17 contain substantially similar subject matter as claim 1. We need not address separately Appellants' arguments regarding no motivation to combine the references (App. Br. 17, top), the "forward-looking"/"backward-looking and performance-related" distinction (*id.* 17, middle), and Cox's "aggregate resource" not being similar to Appellant's claimed "media job category" (*id.*), since we already addressed these arguments above with respect to claim 1. Accordingly, we find no error in the examination of claims 12 and 17.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 1 to 20.

DECISION

The Examiner's rejection of claims 1 to 20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

pgc

HEWLETT PACKARD COMPANY
PO BOX 272400
3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400